

Serial No. 10/657,524

Amdt. in Response to Office Action mailed June 15, 2007

UTILITY PATENT

B&D No. TN3481

REMARKS

Applicant wishes to extend his sincere thanks to the Examiner for conducting a telephonic interview with the Applicant's attorney on October 9, 2007 to discuss the issues raised in the Office Action. The present amendment addresses the issues raised in the Office Action and during the interview.

Applicant has amended Claim 1 as discussed during the interview, which the Examiner noted was likely to raise new issues.

Currently pending in the application are Claims 1-9 and 17-18.

The Examiner objected to Claims 1, 6-9 and 17 due to some informalities. As to Claim 1, the Examiner pointed out that the phrase "will contact" is not sufficiently clear and suggested amending such claim to read —contacts— instead. Applicant has amended Claim 1 as suggested by the Examiner.

The Examiner rejected Claims 1, 6-9 and 17 under 35 USC § 112, second paragraph, as the phrase "the auxiliary plane" lacks proper antecedent basis. In response, Applicant has deleted such phrase.

The Examiner rejected Claims 1 and 6-9 under 35 USC 102(b) as anticipated by EP 0 752 300 ("EP '300"). Reconsideration and withdrawal of these rejections are respectfully requested.

Claim 1, as amended, calls for *inter alia* a fence assembly attached to the base. The fence assembly comprises a fixed fence fixedly attached to the base a movable fence removably connected to the fixed fence, the movable fence slidably connected to and removably connected to the fixed fence, the movable fence being linearly movable horizontally relative to the fixed

Serial No. 10/657,524

Amdt. in Response to Office Action mailed June 15, 2007

UTILITY PATENT

B&D No. TN3481

fence defining a first support plane, at least one of the fixed fence and the movable fence for contacting the workpiece, and an auxiliary fence disposed behind at least one of the fixed fence and the movable fence, the auxiliary fence being higher than a highest point on the fixed fence and defining a second support plane substantially parallel to the first support plane, so that when the movable fence is removed, no portion of the fence assembly is above the fixed fence and in front of the second support plane, allowing the auxiliary fence to contact the workpiece. The fixed fence, the movable fence and the auxiliary fence are disposed on one side of the blade.

The Examiner also has argued that EP '300 has a fixed fence 48, a movable fence 60, and an auxiliary fence 80 disposed behind the fixed and movable fences, the auxiliary fence 80 contacting the workpiece when the movable fence 60 is removed. However, the movable fence cannot be 60; the movable fence has to be "32."

Claim 1 requires that the "movable fence [be] slidably connected to and removably connected to the fixed fence... the movable fence being linearly movable horizontally relative to the fixed fence." Because fence 60 is not slidably connected to ore removably connected to fixed fence 48 or linearly movable horizontally relative to the fixed fence, it cannot the claimed movable. Instead movable fence 32 is slidably connected to and removably connected to the fixed fence, and linearly movable horizontally relative to the fixed fence.

As such, EP '300 cannot anticipate Claim 1 because, assuming the auxiliary fence is 80, movable fence 32 would still be in front of auxiliary fence 80. By contradistinction, Claim 1 requires "an auxiliary fence disposed ... behind at least one of the fixed fence and the movable fence, the auxiliary fence being higher than a highest point on the fixed fence and defining a second support plane substantially parallel to the first support plane, so that when the movable fence is

Serial No. 10/657,524

Amdt. in Response to Office Action mailed June 15, 2007

UTILITY PATENT

B&D No. TN3481

removed no portion of the fence assembly is above the fixed fence and in front of the second support plane, allowing the auxiliary fence to contact the workpiece." Being that EP '300 discloses a part of the fence assembly (movable fence 32) that would remain in front of the second support plane and is higher than the fixed fence 48, EP '300 cannot anticipate Claim 1 and its dependent claims.

The Examiner rejected Claims 1 and 6-9 under 35 USC 103(a) as being unpatentable over US Patent No. 4,869,142 ("Sato") in view of US Patent No. 5,297,463 ("O'Banion") or EP '300. Reconsideration and withdrawal of these rejections are respectfully requested.

If Sato were to be combined with O'Banion or EP '300, the resulting combination would not result in the claimed invention. If a first line substantially perpendicular to the support plane were drawn from the guard 37 and a second line substantially parallel to the support plane and extending from the fixed fence, the two lines cannot intersect because Sato's guard 37 is not directly behind the fixed fence 3. Even if the O'Banion or EP '300 fences were substituted; the first and second lines would still not intersect because the guard 37 is not on top of and/or directly behind the fixed fence portions.

By contradistinction, Claim 1 requires that "a first line extending from the auxiliary fence substantially perpendicular to the second support plane will contact the movable fence at a contact point, and a second line extending substantially parallel to the second support plane from the fixed fence will intersect the first line." Being that the Sato/O'Banion and Sato/EP '300 combinations do not have such arrangement, they cannot render unpatentable Claim 1 and its dependent claims.

10-10-07 13:58 Pg: 10/10
RECEIVED
CENTRAL FAX CENTER
OCT 10 2007

Serial No. 10/657,524

Amdt. in Response to Office Action mailed June 15, 2007


UTILITY PATENT

B&D No. TN3481

In view of the foregoing, Claims 1-9 and 17-18 are patentable and the application is believed to be in condition for formal allowance.

The Commissioner is authorized to charge payment of a one-month extension fee (\$120.00), as well as any other fees due in processing this amendment, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,


Adan Ayala
PTO Reg. No. 38,373
Attorney for Applicants

Adan Ayala - TW-199
The Black & Decker Corporation
701 East Joppa Road
Towson, Maryland 21286
(410) 716-2368

10/11/2007 PCHMP 00000000 022548 10657524
02 FC:1251 120.00 DA